

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Closed Captioning and
Video Description
of Video Programming

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MM Docket No. 95-176

To: The Commission

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JOINT COMMENTS

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SUMMARY

The Joint Parties are licensees of public broadcast facilities serving markets throughout the United States. Collectively, they produce thousands of hours of original programming each year, both locally and through the national distribution by PBS and APR. They support the goals of securing access for all Americans to the benefits of closed-captioned television programming. If requisite funds were uniformly available, the Joint Parties are confident that all or most programming produced by them would be closed captioned.

The Joint Comments briefly summarize the achievements and difficulties encountered by some of the Joint Parties in this area. They are concerned that any fresh and unfunded government mandates should not place unrealistic demands on their financial ability to provide closed captioning or video description services, particularly in the current funding climate.

The Joint Parties urge the Commission:

(1) to exempt from captioning requirements fundraising programming and short-form programming of less than five minutes duration, including program promos, underwriting credits and other station break material

(2) to exempt public broadcasters generally from captioning requirements on economic grounds, or alternatively provide for appropriate relief through the waiver process under the "undue burden" standard

(3) to avoid retroactive captioning of programs

(4) to place any mandated responsibility for captioning on program producers/owners and not on local distributing stations.

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JOINT COMMENTS

Schwartz, Woods & Miller, on behalf of Ball State University (BSU), Connecticut Public Broadcasting, Inc. (CPTV), Detroit Educational Television Foundation (DETF), Educational Television Association of Metropolitan Cleveland (ETA), Fifteen Telecommunications, Inc. (FTT), Louisiana Educational Television Authority (LETA), Maryland Public Broadcasting Commission (MPT), Metropolitan Board of Public Education (MBPE), Mississippi Authority for Educational Television (MAET), the New Jersey Public Broadcasting Authority (NJPBA), Oregon Public Broadcasting (OPB), the University of New Hampshire, (UNH), the University of North Carolina Center for Public Television (UNC), Window to the World Communications, Inc. (WTTW), and WJCT, Inc. (WJCT), collectively referred to herein as the Joint Parties (see Attachment A), pursuant to Section 1.415 of the rules, hereby files these Joint Comments in response to the Commission's Notice of Inquiry (Notice) released December 4, 1995¹

¹ By Order released February 27, 1996 (FCC 96-71), the Commission extended the deadlines for filing comments and replies in this proceeding to March 15, 1996 and April 1, 1996, respectively, noting in particular the mandate of the Telecommunications Act of 1996 that the Commission complete an inquiry to establish current levels of close-captioned programming and adopt rules assuring that video programming is fully accessible.

in the above-captioned proceeding examining a variety of issues relating to closed captioning and video description of video programming.² For further information concerning the Joint Parties, see attached Exhibit A. In support thereof, the following is shown:

A. Background

1. The Joint Parties are licensees of public broadcasting facilities serving markets throughout the United States. Collectively, they produce thousands of hours of original programming each year. Some of this programming is produced for the national program schedule of the Public Broadcasting Service (PBS) or for national distribution through the American Program Service (APS) or for regional distribution, while other programming is produced exclusively for local exhibition. The Joint Parties fully support the goals of securing access for all Americans to the benefits of television programming through closed captioning. Similarly, they support the aim of making television accessible to the visually impaired through video description. They note with justifiable pride that PBS' national prime time schedule, which is comprised in no small measure of programs produced or acquired by the Joint Parties, is virtually 100% closed captioned. Numerous other programs produced by the Joint Parties and distributed nationally and/or locally are likewise closed captioned. Notably, this substantial accomplishment has been achieved without the imposition of a government mandate. If the requisite funds were uniformly

² The Joint Comments do not address video description in detail because of the general paucity of information on the subject and because mandated provision of the service is not immediately proposed.

available, the Joint Parties can state with confidence that all or most programming produced by them would be closed captioned. A brief summary of just some of the Joint Parties current achievements and difficulties in this area is set forth below.

2. While the Joint Parties wholeheartedly support the broad accessibility of television programming, they are nonetheless vitally concerned that any fresh and unfunded government mandates not place unrealistic demands on their financial ability to provide closed captioning or video description services, particularly in the current public television funding climate. The overall cost of closed captioning of programs is substantial. While the cost-per-hour is decreasing, it nonetheless remains in the \$1500-2500 range, depending in part upon the technique employed. The costs of video description are substantially higher, falling in the \$2500-\$5000 range per hour. On an annual basis, the total cost for the closed captioning of all of the programming produced by the Joint Parties would run well into the millions of dollars.

3. To the extent that these stations produce programs for distribution through PBS or APS, they shoulder most or all of the costs of closed captioning inasmuch as those organizations generally either do not fund or at most partially fund the service, although PBS requires closed captioning in its typical production arrangement. In short, unless funds for closed captioning can be found within the budget for any particular program production, it is simply not possible for such a program to be closed captioned.

4. WTTW is the licensee of public television Station WTTW, the primary public television outlet serving Chicago. As a major producer for the public broadcast industry, WTTW currently produces

or co-produces well over 100 hours of programming annually which is nationally distributed, including such popular series as "The McLaughlin Group", "McLaughlin's One-on-One", "Sneak Previews", "Kidsongs", and "The New Explorers", as well as a number of critically acclaimed specials. In addition, WTTW currently produces almost 350 hours of local program fare serving the needs and interests of WTTW's local audience. WTTW currently captions its national programming distributed through PBS. In some instances, WTTW has been able to pass the costs on to co-producers or underwriters. In other instances, WTTW and PBS have shared the budgeted costs. WTTW's locally produced programming is generally not closed captioned. In addition, WTTW devotes approximately 55 hours of air time per year to fundraising appeals. WTTW estimates that the cost of captioning all of this program material would run well over a million dollars. Required captioning of all programming (without a corresponding increase in revenue) could force WTTW, a major producing station, either to decrease its production of original programming or to increase the proportion of less expensive programming (i.e., more "talking heads" programming and fewer field shoots, documentaries and the like).

5. MPT is the state agency charged with the responsibility of providing public television services to the citizens of Maryland. Like WTTW, MPT is also a major producer of nationally distributed public broadcast programming. In particular, MPT produces approximately three hours of such programming per week. Additionally, MPT produces approximately three to four hours per week of local or regional programming, as well as a number of specially-produced programs each month, such as debates and cultural and entertainment

programs. In total, MPT produces well over 380 hours of programming per year. Currently, the majority of MPT's national programming is closed captioned; by the end of 1996, MPT anticipates that some 90% of all programming that it produces, exclusive of station breaks, news breaks and fundraising drives, will be closed captioned. MPT employs two fulltime persons on staff to caption its programs.

6. NJPBA is the state agency responsible for providing public broadcast service to the residents of New Jersey. Over the past few years, NJPBA has experienced a steady decline in state funding of its operations. Notwithstanding this circumstance, NJPBA remains one of the largest producers of local programming within the public television system, producing in the neighborhood of 750 hours per year. Severe funding limitations permit NJPBA to close caption only programs of special significance and scripted portions of various programs, including in particular NJPBA's nightly news program. Closed captioning of all of NJPBA's local programming currently would cost well over one million dollars per year. Dedication of such monies to closed captioning would require the elimination of a substantial amount of NJPBA's current program services. Under these circumstances, universal closed captioning is neither feasible nor in the public interest.

7. Despite these limits, NJPBA currently is installing hardware and software which permits closed captioning of scripted material delivered by a host reading a teleprompter. This system works with scripted programming but does not work with unscripted material, which can only be captioned by means of extremely expensive real time captioning or by off-line captioning, which

results in some degradation of picture quality and requires a minimum advance time of one or two days to complete, which is wholly unsatisfactory for live news programming. In the latter regard, NJPBA is pleased to announce that it has recently received a state grant of some \$60,000 for off-line hardware and software which will enhance its ability to add closed captioning prior to broadcasts. Of course, this new equipment will require an as yet undetermined amount of staff training and time to implement and will cost money to maintain. The extent of these costs is unknown at this time, but NJPBA expects that it will be substantial. Obviously, too, without this grant, NJPBA would be unable to expand its current closed captioning efforts. In any event, NJPBA is committed to captioning as many programs as possible.

8. CPTV is the non-profit entity responsible for providing statewide public television service to the residents of Connecticut. It is another significant producer of programming for both local and national public television audiences. CPTV estimates that it produces well over 100 hours of programming per year, including recurring program series and an average of two to four "specials" per month. CPTV has to date captioned few programs; quite simply, funding limitations have precluded extensive closed captioning of CPTV-produced programs. Notably, it has captioned programming addressing disabilities where funding was provided by foundations with a particular interest in such programming. Without such outside funding, which cannot be guaranteed for CPTV's general interest programming, CPTV would be unable to budget the costs of closed captioning in these special programs.

9. MAET is the licensee of the statewide public television system which has served the State of Mississippi for over 25 years. MAET was a pioneer in the initial development of closed captioning technology in the 1970s. Since then, MAET has offered closed captioning on all PBS programming which includes it. In 1993, MAET began its own efforts to caption local programming. Captioning equipment has been purchased and MAET is in the process of hiring and training two staff members. Once the system is fully operational, MAET expects the cost per prerecorded hour in the \$2200 range. The annual costs will be in the hundreds of thousands of dollars. It must be stressed that: 1) MAET does not expect to be able to caption all of its currently produced programs, let alone its previously produced works; and 2) this effort would not be possible without a generous state appropriation for the service. Like WTTW, MAET is concerned that mandated captioning, particularly of local programming, will result in reduced local production of lower quality. The impact of such an unfunded mandate on smaller public television stations which do not have specific state appropriations supporting closed captioning efforts will be even more severe.

10. MBPE is the licensee of public Station WDCN, Nashville, Tennessee. The station operates in the 33rd television market and has been on the air for 33 years. Station WDCN is operated by a school board and is just emerging from difficult financial times; it is operating with a reduced staff and has no funding prospects for substantial new requirements. The station has the ability to broadcast both closed captions and descriptive video, but it has no closed-captioning origination equipment or staff. Station WDCN

produced 336.5 hours of local programming last year, of which about 40% was for fund-raising. The station produced 201 hours of regular programming last year, some of which was distributed state-wide or regionally and some nationally. MBPE is concerned that a comprehensive closed-captioning requirement would have a severe impact on the financing of local productions.

11. WIPB, the licensee of public television Station WIPB, Muncie, Indiana, desires to stress that there are very few trained and qualified closed-captioned reporters, especially for real time captioning. Full training for real-time closed-captioning reporting takes two to three years. WIPB is concerned that overly-extensive and mandated closed-captioning obligations may therefore raise serious issues concerning the quality of the resultant closed captioning. There is already a lot of substandard closed-captioned programming and the Commission's processes in this area should seek to improve not degrade closed-captioned television programming.

12. Public television stations are working to serve the hearing-impaired community on a financially sound basis. For example, WKPC in Louisville, Kentucky is currently evaluating the possibility of arranging for underwriting by local businesses for closed captioning. That underwriting would be credited only by closed caption.

B. Generic Issues

13. Against this backdrop of the Joint Parties' experiences, a number of basic issues must be acknowledged in addressing the closed captioning issue and its relationship to the operational realities underlying the vast majority of public television licensees' operations. First, it should be stressed that the

public broadcast industry faces almost certain decreases in federal funding support for their activities. The current moves in the Congress to revamp the manner in which public broadcasters receive public support will inevitably place greater strains on budgets that are already stretched to the limit and constrain many licensees in their efforts to provide service to their constituents. At the same time, public broadcasters are well aware that a substantial portion of their audience is comprised of hearing impaired individuals and that closed captioning can also benefit non-hearing impaired persons to the extent that it can be used as a tool in learning language. They thus have every incentive to provide the service where they have the financial wherewithal to do so.

14. Secondly, public broadcasters which produce their own programming as well as the independent producers whose programming they present to the public broadcast system are heavily dependent upon sources other than the federal government to underwrite their programming. This dependence may be expected to increase in the future as federal funding decreases. Underwriting is a key source of support for program production. While public broadcasters routinely seek money for closed captioning from program funders, such funders frequently decline to provide for the service in the production budget. Without these funds, closed captioning cannot be provided in the absence of support from an independent source such as a foundation.

15. Then, too, the Commission must distinguish among the different types of closed captioning which may be applied to any given program and the implications of each. Teleprompter closed captioning, the least expensive mode, can be applied to the

portions of live programs, such as news or public affairs shows, which are scripted. Thus, it is possible to make portions of news and public affairs programming available to the hearing impaired. Unfortunately, this technology cannot be applied to the unscripted portions of news and other live public affairs programs, which means that in the absence of real-time captioning, a live program cannot be made fully available to the public.

16. Off-line closed captioning equipment, which can be used on site as an alternative to shipping programming out for the service, can be secured at a substantial one-time cost (approximately \$50-75,000). It requires significant staff time to operate over the course of a year. For licensees which produce a large amount of programming, in-house closed captioning of this type may prove cost effective over a reasonable period of time. For licensees which do not produce large amounts of programming, in-house off-line captioning is not cost effective. At the same time, off-line captioning results in some degradation of picture quality since it entails a rerecording of the program to be closed-captioned and, too, raises logistical issues to the extent that it may take one or two days from the completion of a program to close-caption it, and considerably longer where the program has to be shipped out for captioning by a third party.

17. Real-time closed captioning, which is necessary for the full captioning of live programming, is extremely expensive. While it might be feasible for some licensees to use real-time captioning for certain special programs, its cost on an ongoing basis in connection with a continuing program series such as a daily news program is prohibitively expensive.

18. It should also be noted that most public broadcasters engage in substantial on-air fundraising, particularly during pledge drives. This activity consumes many hours of partially scripted or unscripted time. This fundraising does not serve a fundamental goal of public broadcasting of the licensee to provide entertainment and information; rather, it is an operational necessity undertaken solely to permit the continued provision of quality television programming by individual public broadcasting licensees. Much as licensees would like to fully communicate with all of their constituents during these critical fundraising periods, the costs of closed captioning are simply prohibitive relative to the benefits to the public activity. In fact, the Joint Parties submit that all viewers can understand the essential message (that is, a request for support) without captioning. It is far more important to devote any funds available for captioning to programs themselves.

19. Similarly, like their commercial counterparts, public broadcasters will air numerous station breaks during the course of a year which include material promoting programming and related activities as well as underwriting credits, news breaks or other short informational programs. The Joint Parties submit that, relative to the public benefits, the costs of captioning these segments would be prohibitive. Like fundraising, these breaks are programmatically unrelated to the core mission of public broadcast licensees and scarce funds for captioning should not be diverted from programs themselves to these segments.

20. Public broadcasters, unlike commercial broadcasters, import significant amounts of foreign programming. Much of that programming is from England. Foreign programming does not include closed captioning, and it is not likely that foreign governments will impose closed-captioning requirements in the same way or on the same timetable as the FCC, if at all. A uniform imposition of closed-captioning requirements on new production could serve effectively to bar or hamper the importation of this foreign programming, which adds substantially to program diversity.

C. The Joint Parties' Proposals

21. The Joint Parties fully agree with the aims of Section 713 of the Telecommunications Act of 1996 (the Act) to assure broad accessibility to programming. They note that the Commission has significant flexibility under the statute to exempt certain types of programming from closed captioning requirements and to allow programmers to seek an exemption from closed captioning requirements upon a showing that imposition of such requirements would impose an undue burden. Accordingly, they urge the Commission to adopt a rule categorically exempting from closed captioning requirements public television licensees' fundraising appeals and short-form programming of less than five minutes' duration, including material promoting station programming and related activities, underwriting credits, news breaks or other informational programming and the like.

22. More generally, the Joint Parties urge the Commission to exempt public broadcasters from the requirements of Section 714 in light of their obvious funding difficulties, the mechanism by which funds are raised and allocated for public television programming

which they produce or commission, and their record of closed captioning accomplishments in spite of those limitations. Alternatively, should the Commission determine not to exempt public broadcasters generally, it should at the very least permit a licensee to qualify for an exemption under the "undue burden" standard if it can certify that funds for a production do not include an allocation for closed captioning and that such funding could not be raised through good faith negotiations with prospective funding sources. Let it be noted that MPT supports the closed captioning of programs generally and, therefore, does not concur with the position set forth in this Paragraph.

23. In any event, whatever requirements the Commission ultimately decides to adopt should be applied prospectively only. There are literally hundreds of thousands of hours of programming which has been produced by public broadcasters over the years. Some of this programming remains popular. Other programming remains on the shelf. The Joint Parties' collective experience with closed captioning of current productions clearly reveals that there is no discernible source of funding for previously produced programming. To compel retrofitting of these programs would divert captioning resources away from fresh and original programs. The Commission should not permit this result.

24. Of course, public broadcasters would remain free to captioning any of this programming in their discretion and most assuredly they would do so where the popularity of a program warrants captioning and funds are specifically available for this purpose. In the latter regard, the Joint Parties observe that Section 714 of the Act directs the Commission to establish a

Telecommunications Development Fund (the Fund), among other things, to "stimulate new technology development. . . and to promote delivery of telecommunications services to underserved rural and urban areas." In the Joint Parties' view, the large hearing impaired population could and should be considered "underserved" within the meaning of the Act. Accordingly, the Joint Parties urge the Commission in its administration of the Fund to establish criteria which will reserve some portion of the Fund for the closed captioning of programming produced by public television licensees.

25. Similarly, the Joint Parties strongly believe that any closed captioning mandate should apply to the producer and/or owner of a program and not to the local station distributing the program.³ Accordingly, the Commission should adopt appropriate definitions of the terms "programming provider" or "programming owner" to make it clear that licensees of such programming are not liable for compliance with closed-captioning requirements. Application of any closed captioning requirements to program producers and/or those parties which enjoy the benefits of ownership and not to local distributing stations is both logical and fair. Mandated closed captioning by public broadcasters of programming supplied to them without captioning would force meritorious programming off the air. Such a result manifestly would frustrate the expressed purposes of the Act.

³ Distributors desiring the local station to air particular uncaptioned programs should of course bear the appropriate closed-captioning responsibilities.

WHEREFORE, for the foregoing reasons, the Joint Parties urge the Commission to propose rules governing the closed-captioning of programming which are consistent with the views expressed herein.

Respectfully submitted,

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WEDN(TV), Norwich, CT
WEDW(TV), Bridgeport, CT
WEDY(TV), New Haven, CT

Detroit Educational Television Foundation
WTVS-TV, Detroit, MI

Educational Television Association of Metropolitan Cleveland
WVIZ-TV, Cleveland, OH

Fifteen Telecommunications, Inc.
WKPC-TV, Louisville, KY

Louisiana Educational Television Authority
WLPB-TV, Baton Rouge, LA
KLPA-TV, Alexandria, LA
KLPB-TV, Lafayette, LA
KLTL-TV, Lake Charles, LA
KLTM-TV, Monroe, LA
KLTS-TV, Shreveport, LA

Maryland Public Broadcasting Commission
WMPB(TV), Baltimore, MD
WMPT(TV), Annapolis, MD
WWPB(TV), Hagerstown, MD
WCPB(TV), Salisbury, MD
WFPT(TV), Frederick, MD
WGPT(TV), Oakland, MD

Metropolitan Board of Public Education
WDCN-TV, Nashville, TN

Mississippi Authority for Educational Television
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WMAB-TV, MS State, MS
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WNJS(TV), Camden, NJ

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University of New Hampshire

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WHED-TV, Hanover, NH
WEDB-TV, Berlin, NH
WLED-TV, Littleton, NH

Window to the World Communications, Inc.

WTTW-TV, Chicago, IL

University of North Carolina Center for Public Television

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WUNE-TV, Linville, NC
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